



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

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CONSUMER LOAN ACT

INTERPRETIVE STATEMENT 2010-1

DATE: December 1, 2010 **REVISED 6/12/2014**

FROM: Deborah Bortner, Director, Division of Consumer Services

RE: Consumer Loan Act, chapter 31.04 RCW – Exemption from Licensing for Certain Activities

QUESTIONS PRESENTED:

1. Am I exempt from licensing under the CLA if I lend money to an immediate family member?
2. Am I exempt from licensing under the CLA if I sell my home and carry the financing for the buyer?

SHORT ANSWERS: Yes and Yes.

DISCUSSION: The regulatory structure under the Consumer Loan Act (CLA or Act) requires licenses at both the company and individual levels. At the company level, a license is required to make loans (lend money or extend credit whether secured or unsecured), broker residential mortgage loans, or service residential mortgage loans. The activity of brokering residential mortgage loans is also regulated under the Mortgage Broker Practices Act (MBPA), chapter 19.146 RCW, but a company can only have one of the two license types. At the individual level, a license is required when an individual acts as a residential mortgage loan originator. Under the CLA, the definition of a mortgage loan originator is, in part:

an individual who for compensation or gain (i) takes a residential mortgage loan application, or (ii) offers or negotiates terms of a residential mortgage loan. See RCW 31.04.015(15).

The federal SAFE Act (the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008), also requires licensing of individuals who act as residential mortgage loan originators. As implemented through the CLA, the SAFE Act provides an exemption from licensing when an individual offers or negotiates terms of a residential mortgage loan with or on

behalf of an immediate family member of the individual. The SAFE Act also exempts a transaction wherein an individual offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence. See WAC 208-620-105. The CLA defines immediate family members as a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships. See WAC 208-620-010.

The director has authority under the CLA to waive the applicability of the licensing requirement of the CLA to companies under certain circumstances. The director's authority is limited to waiving the licensing requirement; other provisions of the Act may still apply. The director cannot waive the licensing requirement for individuals acting as mortgage loan originators unless the individuals are exempt from the federal SAFE Act. See RCW 31.04.025(3).

This statement does not excuse the responsibility of any person to provide required state or federal disclosures, when applicable, when lending money or extending credit.

CONCLUSION:

1. Individuals who make loans or extend credit, whether secured or unsecured, to immediate family members are not required to obtain the company level license under the CLA.
2. Individuals are not required to obtain individual mortgage loan originator licenses under the CLA when acting as such with or on behalf of immediate family members in residential mortgage transactions.
3. Individuals who extend credit on the sale of their primary residence are not required to license at the company level under the CLA.

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STATUTES AND RULES RELIED UPON: Chapter 31.04 RCW and chapter 208-620 WAC.